

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-5890-2024(O&M)

Date of order: 03.04.2024

Mr. Soumyodipto Roy & Another

.....Petitioner(s)

Vs.

State of Haryana & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Gurmandeep Singh Sullar, Advocate
Ms. Diksha Garg, Advocate
for the petitioners.

Mr. Ranvir Singh Arya, Addl. AG Haryana.

Nidhi Gupta, J.

CRM-5060-2024

This is an application under Section 482 Cr.P.C. for exemption from filing certified/typed and more legible copies of the Annexures and more legible copies of ID proof of the petitioners annexed with the petition.

After going through the contents of the application, which is supported by affidavit of petitioner No.1, the same is allowed subject to all just exceptions.

MAIN CASE

Present petition under Section 482 Cr.P.C. is filed seeking quashing **on merits** of FIR No.113 dated 28.11.2020 registered under Sections 323, 406, 498-A, 506, 509 AND 34 IPC (Section 377 IPC

deleted later on) at Women Police Station Gurgaon, District Gurugram, Haryana.

2. Learned counsel for the petitioners inter alia submits that petitioner No.1 is the husband and petitioner No.2 is the mother-in-law of complainant/respondent No.2 herein. It is submitted that petitioner No.1 was married to the complainant on 24.06.2006 at a temple. After marriage, they went for their honeymoon to Shimla. Thereafter, they registered their marriage at Roorkee Court, as is evident from marriage certificate dated 17.08.2009 (Annexure P7). On 05.09.2012, petitioner No.1 and the complainant were blessed with a baby boy. However, matrimonial discord erupted between the parties and subsequently the relationship between petitioner No.1 and the complainant increasingly deteriorated. It is submitted that on the intervening night of 18/19.05.2016, there was a serious altercation between petitioner No.1 and the complainant, in which the complainant even assaulted petitioner No.1. Thereafter, the complainant became habitual of shouting and screaming at petitioner No.1 and abusing him. The complainant used to incessantly fight with petitioner No.1 and was always rude and abusive towards him. Despite this in January, February and March, 2020, petitioner No.1 sent chocolates, flowers, gifts and cards to the complainant. Yet, the complainant left the matrimonial home in August, 2020. In this regard, petitioner No.1 also approached the ACP on 11.08.2020 and requested her help in bringing the complainant and their son back to the matrimonial home. It is submitted that the complainant is of quarrelsome nature and all through the married life, threatened the petitioners that she would file false cases against them.

It is contented that it is in this background, that the complainant has lodged an entirely false and frivolous complaint against the petitioners on 14.08.2020, on the basis of which, present FIR has been registered.

3. Learned counsel submits that the allegations made in the FIR are utterly false and fabricated. It is submitted that on the contrary, as is evident from the facts, enumerated here in above it is the complainant who has tortured, humiliated and inflicted cruelty upon the petitioners. It is reiterated that there is no truth whatsoever to the allegations made in the FIR and it is accordingly prayed that the present FIR be quashed qua the petitioners.

4. Per contra, learned State counsel has submitted on instructions that challan has been filed in the present case and matter is now fixed for framing of charges before the learned trial Court on 08.05.2024.

5. No other argument is made on behalf of the parties.

6. I have heard learned counsel for the parties and perused the case file in detail.

7. Perusal of the FIR (Annexure P1) reveals that very serious allegations of physical assault, sexual abuse without consent, unnatural sex and beating by petitioner No.1 on multiple occasions have been made by the complainant against the petitioner No.1. It has also been alleged that petitioner No.1 had forced the complainant to undergo abortion 2-3 times against her wishes. In the FIR at page 71 of the paper book, it has been alleged that petitioner No.1 forced the complainant to

bring credit card details of some client which were misused by petitioner No.1 to purchase three mobile phones and other items. However, petitioner No.1 was later caught by the police, he had to return the items, apologize to the client and he had to use his contacts to avoid arrest. It has further been alleged that petitioner No.2/mother-in-law used to call the grandmother of the complainant and make demands of money and jewellery on occasion of each festival and also used to harass the complainant. Petitioner No.1 used to take all the salary of the complainant. After graduation, the complainant started working as a Back Office Executive at a company in Noida, where she was living with petitioner No.1. It is further alleged in the FIR that petitioner No.1 was already married to one Shreyashi Debnath, when he married the complainant on 24.06.2006 and he was still in contact with the said lady. It is further stated that petitioners always treated the complainant like a maid and never gave her proper food or any money. Petitioner No.2 demanded gold bangles and money on occasion of wedding of her daughter, which were given to her by the parents of the complainant. It is further alleged in the FIR that complainant got pregnant again in January, 2012 and she was asked by petitioner No.1 to abort the child, but she refused to do so. As such, petitioner No.1 who is a chain-smoker and an alcoholic, used to beat the complainant mercilessly and used to kick her to abort the child. Once, petitioner No.1 became furious with his own mother/petitioner No.2 and had beaten her mercilessly, due to which the ear drum of petitioner No.2 got damaged, after which they did not talk to each other for almost one year.

8. The FIR is replete with similar such allegations of assault and abuse inflicted upon the complainant by the petitioners. It has further been stated that petitioner No.1 had also demanded Rs.15-20 lakh from the complainant (at page 72 of the paper book) and he had also levelled false allegations of adultery against the complainant. On 01.08.2020, petitioner No.1 beat up the complainant and forced her to leave the matrimonial home.

9. The legal position in such like cases is very clear. FIR can be quashed only if prima facie case is not made out against the accused. In the present case, learned counsel for the petitioners has tried to impress upon this Court that allegations made in the FIR are utterly false and fabricated. However, needless to say, the truth or otherwise of these allegations can only be determined by the learned trial Court upon leading of evidence by both the parties. On a preliminary appraisal of the matter, this Court does not deem it fit to quash the FIR. No ground is made out to quash the FIR of such nature merely because the allegations made therein are denied by the accused/petitioners herein.

10. Reference may be made to a 3-Judge Bench of the Hon'ble Supreme Court in case titled as **"M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Others"** Law Finder Doc ID # 1830709, wherein it has been held as follows: –

"10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in

- Chapter XIV of the Code to investigate into cognizable offences;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;*
- iv) The power of quashing should be exercised sparingly with circumspection, in the rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C., 1973 is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);*
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi) Criminal proceedings ought not to be scuttled at the initial stage;*
- vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;*
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C., 1973*
- ix) The functions of the judiciary and the police are complementary, not overlapping;*
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C., 1973 is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., 1973 only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

(Emphasis supplied)

11. The above legal position has been reiterated by the Hon'ble Supreme Court in **"Satvinder Kaur Vs. State (Govt. of NCT of Delhi)" Law Finder doc ID # 32588**, wherein it has been held as under:-

"D. Criminal Procedure Code, 1973, Section 482 - Quashing of FIR - Law enunciated by Supreme Court summed up :-

- (i) If an offence is disclosed, Court will not normally interfere with investigation into the case and will permit investigation into the offence - If FIR, prima facie, disclosed commission of an offence, court does not normally stop the investigation, for to do so would be to trench upon the lawful power of Police to investigate into cognizable offences. 1982(1) SCC 561.*
- (ii) For purpose of exercising power under Section 482 Criminal Procedure Code, 1973 to quash FIR or a complaint, the High Court would have to proceed entirely on basis of allegations made in the complaint or the documents accompanying the same - It has no jurisdiction to examine the correctness or otherwise of the allegations. 1985(2) SCC 370.*
- (iii) Power of quashing the criminal proceedings should be exercised very sparingly with circumspection and that too in the rarest of rare cases.*
- (iv) Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.*
- (v) First information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed,*

utmost care should be taken by the court and at that stage it is not possible for the Court to sift the materials or to weigh the materials and then come to the conclusion one way or the other. 1991(1) RCR (Criminal) 831.

- (vi) High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Articles 226 and 227 of the Constitution of India and allow the law to take its own course.*
- (vii) Such power should be sparingly and cautiously exercised only when the court is of the opinion that otherwise there will be gross miscarriage of justice.*
- (viii) Social stability and order is required to be regulated by proceeding against the offender as it is an offence against the society as a whole.”*

12. A bare reading of the FIR discloses cognizable offences against the petitioners. As such, in view of the factual position, as also the abovenoted unequivocal legal precedent, the present petition stands **dismissed.**

13. Pending application(s) if any also stand(s) disposed of.

03.04.2024
Sunena
Whether speaking/reasoned
Whether reportable

(Nidhi Gupta)
Judge
Yes/No
Yes/No